

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #11	CCRB Case #: 201506154	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/25/2015 10:30 PM	Location of Incident: 315 East 5th Street	Precinct: 09	18 Mo. SOL 1/25/2017	EO SOL 1/25/2017	
Date/Time CV Reported Sun, 07/26/2015 1:40 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 07/26/2015 1:40 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Gavin	24210	922408	009 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Andrew Beirne	17848	915291	009 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Gavin	Abuse: PO Joseph Gavin questioned § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Joseph Gavin	Discourtesy: PO Joseph Gavin spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Joseph Gavin	Abuse: PO Joseph Gavin threatened § 87(2)(b) [REDACTED] with the use of force.	[REDACTED]

### Case Summary

On July 25, 2015, at approximately 10:30 p.m., § 87(2)(b) and his friend § 87(2)(b) and her boyfriend § 87(2)(b) left Risotteria Melotti, a restaurant located at 309 East 5<sup>th</sup> Street, in Manhattan after having dinner. After they exited the restaurant, § 87(2)(b) and § 87(2)(b) stopped in front of 315 5<sup>th</sup> Street to observe a pigeon statue. § 87(2)(b) took a receipt that he had been holding and threw it in the general direction of the statue. PO Joseph Gavin, of the 9<sup>th</sup> Precinct, approached § 87(2)(b) and stated, “Hey what the fuck are you doing?” (**Allegation A and B**). PO Gavin also told § 87(2)(b) that he was going to put his fist through his teeth or punch him in the teeth (**Allegation B**). When § 87(2)(b) asked PO Gavin who he was, he responded by saying that he was an off duty officer and if he wasn’t an off duty officer he would have taken § 87(2)(b) and thrown him through a window (**Allegation B continued**). PO Gavin then entered the 9<sup>th</sup> Precinct station house.

§ 87(2)(g)

There is no video evidence for this case

### Civil and Criminal Histories

- § 87(2)(g)
- § 87(2)(b) did not file a Notice of Claim (see 04 Board Review).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officers CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (see 08 Board Review)
- PO Gavin has been a member of the service for 17 years and has no previous CCRB complaints.

### Findings and Recommendations

#### Recommendations

**Allegation A-Abuse of Authority: PO Joseph Gavin questioned § 87(2)(b)**

**Allegation B-Discourtesy: PO Joseph Gavin spoke discourteously to § 87(2)(b)**

**Allegation C-Abuse of Authority: PO Joseph Gavin threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that he had just thrown a receipt in the vicinity of a realistic pigeon statue when PO Joseph Gavin approached him and said something to the effect of, “Hey, what the fuck do you think you are doing?” § 87(2)(b) clarified that he could not recall the exact statement that the officer used, but the word “fuck” was used. PO Gavin then told § 87(2)(b) that he was bothering a sick or dying bird and said, “I am going to put my fist through your teeth” or “I am going to punch you in the teeth.” While PO Gavin made the statement, he allegedly held up his right fist. When § 87(2)(b) asked PO Gavin who he was, the officer replied that he was an off duty officer and stated that if he wasn’t an off duty officer, he would have taken § 87(2)(b) and thrown him through a window.

PO Gavin stated he was walking behind § 87(2)(b) when he observed him throw a rock or a similar object at a dying pigeon. PO Gavin, who was directly behind § 87(2)(b) immediately yelled, “What the hell do you think you are doing?” § 87(2)(b) turned towards PO Gavin and said something along the lines of “Who the hell are you?” PO Gavin could not recall if he used any profanity during the incident and stated that he may have said “Hey what the fuck do you think you are doing?” PO Gavin could not recall if he used the word “fuck” in any other context. PO Gavin stated that towards the end of his conversation, he told § 87(2)(b) that if he wasn’t a police officer that he would probably throw him through the window. PO Gavin made this statement in order to shame and embarrass § 87(2)(b) PO Gavin denied telling § 87(2)(b) or any of the civilians that he was with that he was going to put his fist through their teeth or punch them in the teeth. He could not recall if he threatened § 87(2)(b) or the other civilians with the use of force. PO Gavin was not in uniform and did not display his badge or use his badge as an authority of a police officer while confronting § 87(2)(b)

According to People v. Debour, 40 N.Y.2d 210 (1976) (10 Board Review), level one questions are considered general requests for information, which are non-accusatory in nature and require officers to have an articulable reason to pose them. Patrol Guide Procedure 203-15 (see 06 Board Review) states that all members of the service are strictly accountable for this conduct at all times, whether on or off duty, inside or outside of New York City. Additionally, all members of the service are subject at all times to the provisions of the Patrol Guide, other department regulations, and all local, state and federal laws. Patrol Guide Procedure 203-09 (see 05 Board Review) states that an officer is mandated to speak courteously and respectfully when interacting with civilian members of the public. According to PD V. Milne, OATH index n.222/00, July 23, 1999 (see 07 Board Review), in some instances, a police officer may use profanity in the heat of a highly dangerous situation or in order to punctuate an order given under extremely stressful circumstances to obtain compliance. Patrol Guide procedure 203-11 (see 11 Board Review), states that an officer can only use the minimum amount of force necessary to overcome a person’s resistance while being placed under arrest.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date